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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

LOUISE M.,

Petitioner,

v.

THE SUPERIOR COURT OF TUOLUMNE  
COUNTY,

Respondent,

TUOLUMNE COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party In Interest.

F039219

(Super. Ct. Nos. JV4951 & JV4952)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charles V. Stone, Judge.

Gerald Kahl, County Public Defender, for Petitioner.

No appearance for Respondent.

Gregory J. Oliver, County Counsel, and Kim M. Knowles, Deputy County Counsel, for Real Party In Interest.

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\*Before Vartabedian, Acting P.J., Wiseman, J., and Levy, J.

Petitioner, Louise M., seeks extraordinary writ review (Welf. & Inst. Code,<sup>1</sup> §366.26, subd. (l); Cal. Rules of Court, rule 39.1B) of respondent court's order that a section 366.26 hearing be held on January 28, 2002, as to her daughter, Xena, and her son, Alvin. She contends the court erred in terminating reunification services and setting the matter for permanency planning. We will affirm the judgment.

### **STATEMENT OF THE CASE AND FACTS**

On June 2, 2000, the Tuolumne County Department of Social Services (department) filed a dependency petition alleging petitioner physically abused Marina, the step-sister of then six-month-old Alvin, and two-year-old Xena. (§ 300, subd. (j).) The department alleged that on July 15, 1999, petitioner instructed Marina to go to her room and then placed a chair in front of the door so that Marina could not exit. Unable to leave the room, Marina urinated on the bedroom floor. Petitioner punished Marina by physically assaulting her, causing facial abrasions, swelling on the back of the head, bruising on her upper right thigh and finger marks on the upper back of her right leg. She also rubbed Marina's face in the urine-soaked carpet. She warned her husband to remove Marina from the home, stating "Get the fucking kid out of this house before I beat the fucking shit out of her."

Alvin and Xena were taken into protective custody and placed in foster care. The juvenile court sustained the allegations and ordered petitioner to obtain a psychological evaluation, participate in mental health counseling, complete a parenting program and submit to random drug testing.

Two clinical psychologists, Dr. Galyn Savage, Ph.D. and Arlene Giordano, Ph.D., examined petitioner and independently concluded she suffered from borderline personality disorder and she did not have the parenting skills to properly care for

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

children. In light of petitioner's significant mental health problems and her poor parenting prognosis, the department recommended the court terminate services at the six-month review hearing.

The six-month review hearing was conducted on April 23, 2001, and set for a contested hearing. Counsel for petitioner advised the court petitioner had started taking psychotropic medication since her psychological evaluations. Counsel requested that the court order a second psychological evaluation to determine if the medication improved her mental state. The court ordered Drs. Savage and Giordano to reexamine petitioner.

Upon reexamination, both psychologists found petitioner demonstrated a more positive attitude toward the possibility of personal change and the importance of taking personal responsibility for her behavior. Accordingly, they recommended the court offer continued reunification services. At the contested six-month review hearing conducted on June 19, 2001, the court ordered continued services and set the 12-month review hearing for October 15, 2001.

On September 14, 2001, Xena's foster parent reported petitioner sexually abused Xena during overnight visits. On August 29, 2001, the day after an overnight visit with petitioner, Xena got out of the bathtub, began rubbing her genital area and inserting her finger in and out of her vagina. Xena told the foster parent, "My old mommy does this for me at bedtime. This is our bedtime game." Xena told her foster parent that she slept in petitioner's bed and petitioner touched her vagina at bedtime and bath time. The foster parent told Xena that the bedtime game was a bad game and instructed Xena to tell her mother to stop touching her "private area." On September 10, 2001, following a weekend visit with petitioner, Xena again began masturbating at bedtime, repeating the same behavior she had demonstrated previously. On that date, Xena told her foster parent's 21-year-old niece that her mother touches her "privates." Xena again demonstrated what she said petitioner did at bedtime, inserting her finger in and out of

her vagina and rubbing her genitals. She subsequently described this same behavior to the child interview specialist. Petitioner's visitation was immediately terminated.

The 12-month review hearing was conducted on October 15, 2001. In a statement before the court, petitioner denied the allegations and requested further investigation into the matter. However, she did not present any rebuttal evidence. The court denied the request and terminated reunification services.

### **DISCUSSION**

The department argues the petition should be dismissed as facially deficient because it fails to comport with the requirements of California Rules of Court, rule 39.1B. In the alternative, the department argues substantial evidence supports the court's order terminating services.

Notwithstanding the procedural requirements of rule 39.1B(j), we decline to dismiss the petition. Rule 39.1B(j) requires a petition for extraordinary writ summarize the particular factual bases supporting the petition and relate those facts to the grounds alleged as error, citing specific portions of the record and noting disputed aspects of the record. Rule 39.1B(j) further requires petitioner attach a memorandum of points and authorities to the petition. However, rule 39.1B(i) also directs a reviewing court to liberally construe petitions in favor of their sufficiency.

In this case, we conclude petitioner alleged sufficient facts to allow a meaningful review of the record and raised cognizable issues warranting a review on the merits. Thus, we decline to dismiss her petition on technical grounds.

However, we find petitioner's claims meritless. She argues she was wrongly accused of molesting her daughter, the case worker harbored a conflict of interest and the attorney mishandled her case. However, the record does not support her contentions. In this case, the juvenile court made a series of findings, one of which was that return of Xena and Alvin to petitioner would create a substantial danger of detriment to their physical health, safety and protection. We review a court's finding of detriment for

substantial evidence (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762) and, in this case, substantial evidence supports the court's finding. Petitioner's limited capacity to parent was well documented and supported by two independent psychologists. In addition, Xena, at age 4, was able to describe the sexual molestation in detail. She reported the touching to three people on three separate occasions and in each disclosure, she identified petitioner as the perpetrator. There is no evidence on this record to rebut those accusations nor does petitioner provide any on review. We find no error.

#### **DISPOSITION**

The petition for extraordinary writ is denied.